

Legal services market study: Interim report

An interim report issued by the Competition & Markets Authority

Comments from ACCA

August 2016

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 188,000 members and 480,000 students in 178 countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 100 offices and centres and more than 7,400 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

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OVERALL COMMENTS

ACCA welcomes the opportunity to comment on the findings of the interim report issued by the Competition & Markets Authority (the CMA) on 8 July 2016. The deadline offered for comments was 19 August 2016 – providing only six weeks for respondents to consider the interim report and formulate responses, during the peak holiday period. Nevertheless, we have endeavoured to provide a constructive response, which is, through necessity, at a high level.

ACCA regulates its members, students and firms in the public interest. Its interest in the CMA's market study arises from the following:

- Accountants often provide services to their clients and employers that include elements of legal advice or legal compliance. Therefore, accountancy services are provided that may also be considered to be legal services.
- ACCA is an approved regulator in respect of probate services. However, ACCA has not yet put in place arrangements that would permit it to start authorising individuals to provide probate services to clients. We believe that the public benefit of allowing a greater number of professionals to provide probate services to their clients warrants substantive change to the regulatory framework for legal services. Since achieving recognition as an approved regulator, ACCA has identified the risk of disproportionate regulatory burden, including the costs associated with regulatory oversight.

ACCA strongly supports the principles of better regulation, as set out in the Legislative and Regulatory Reform Act 2006. We believe that an effective regulatory framework facilitates (and requires) transparent policies and processes that are targeted and risk-based. Moreover, a framework that fails to pay due regard for proportionality stifles competition. Lack of proportionate regulation not only prevents suppliers of services entering the market, but also has a detrimental impact on the costs of providing legal services, which bears a direct relationship to levels of unmet demand.

An effective regulatory framework would promote trust in the legal profession, which is also fundamental to reducing levels of unmet demand. When combined with appropriate competition, this trust furthers the public interest,



as those in need of legal services have the confidence to engage those who possess the expertise to supply them. An effective regulatory framework for legal services supports a strong economy and breaks down barriers that restrict business and innovation.

SPECIFIC ISSUES

In this section of our response, we address the three distinct issues identified in the interim report.

The role of information in driving competition

We note that a minority of consumers compare costs before choosing a legal services provider. We cannot be sure of the reasons for this. However, given the ‘substantial degree of price dispersion’ referred to in paragraph 1.16, we might assume that, much of the time, legal services are being sought in ignorance of the variations in price and quality available. It follows that there are those with lower incomes who refrain from seeking legal advice and support, as they simply perceive legal services as being prohibitively expensive. The effect of this on unmet demand would appear to be considerable.

Although information on cost may be considered important in driving competition, it is of negligible value without the corresponding information on the services being provided, including quality. It is difficult to conceive how objective, comparable information on quality might be achieved. However, we believe that the reputation of a particular profession or regulated community should provide sufficient information on quality. This emphasises the importance of transparent regulation, which must be rigorous while remaining targeted and proportionate.¹

The role of regulation in protecting consumers

We note the assertion in paragraph 1.22 that ‘[most consumers] assume that all providers of legal services would be regulated’. This suggests a need for

¹ Lack of proportionality in regulation results in unnecessary cost for the regulated businesses and consumers. We welcome the quote from the Clementi Review in paragraph 1.1 of the interim report that ‘high quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the state’.



either better information or more extensive regulation, but with the need to uphold the public interest paramount. The CMA should, of course, consider the findings of its market study in the context of the UK Government's drive to reduce regulation and red tape. We believe that the interim report indicates a need to identify appropriate reductions in regulation while legal services regulators adopt proportionate, risk-based processes. In addition, focus on regulatory outcomes should include enhanced information concerning regulation (indicative of quality and consumer protection) provided by both regulators and regulated businesses.

Members of ACCA (and ICAEW for example²) are regulated professionals. Such regulation includes requirements to hold adequate professional indemnity insurance and (where appropriate) fidelity guarantee insurance. If probate was to be 'unreserved', consumers of the services of regulated accountants would continue to benefit from this protection.

The term 'accountant' is not protected in law, and so this proposal is linked to the role of information in driving competition and enhancing the confidence of consumers. The general public would benefit greatly from clear information that explains how the providers of legal services (including accountants) are regulated. It appears that the findings of the market study so far concerning actual exposure to risk and access to redress are inconclusive. At this stage, it appears reasonable to assume that any weaknesses in the regulatory framework and lack of consumer information concerning regulation would be detrimental to both the quality of service delivery and access to redress. However, of paramount importance to this market study is the level of unmet demand for legal services. Therefore, the value of the CMA's findings and its final report are considerable.

The potential for regulation to restrict competition

ACCA is an approved regulator in respect of probate activities, recognised in schedule 4 to the Legal Services Act 2007. However, since gaining this status in 2009, ACCA has not progressed to authorising its members for this reserved legal activity. We believe that it is in the public interest to open up the legal services market, and so enhance competition and choice. As already stated, the issue of legal services competition is directly related to the Government's 'red

² The Institute of Chartered Accountants in England and Wales is also an approved regulator in respect of probate services.



tape challenge', and reasonable opportunities to reduce the regulatory burden on businesses and consumers should be pursued.

Increasing competition, and the benefits that flow from that (including efficiency and innovation), must not be considered in isolation. For example, in respect of the process of obtaining grant of probate, we believe that it would be less stressful (as well as less expensive) for clients to engage their accountant, rather than engage another professional who does not already have a thorough knowledge of the deceased's estate.

We believe there is a significant public benefit in new providers of legal services entering the market. However, ACCA has identified the various deliverables and potential costs associated with authorising its members for probate services. Risks associated with ACCA proceeding towards authorising its members include escalating costs to ACCA arising out of possible disproportionate levels of regulatory oversight. Therefore, ACCA has not, thus far, decided to proceed towards authorising its members for the provision of probate services.

In July 2011, the Legal Services Board (LSB) commenced three investigations under sections 24 and 26 of the Legal Services Act. The objective was to form a view on whether or not the LSB should recommend that the Lord Chancellor amend the list of reserved legal activities in section 12 of the Act. This included (as part of the section 24 investigation of estate administration activities) an exploration of whether probate should cease to be a reserved legal activity.

The LSB's conclusion was that estate administration activities should not be added to the list of reserved legal activities, but that probate activities should not be removed from the list. However, the LSB stated that it would 'remain open to reviewing the case for probate activities ceasing to be a reserved legal activity should circumstances change, or as part of any general simplification review, of the Act'.³ In the course of drawing this conclusion, the report stated the following:

'We note that the investigation identified problems with probate activities being the only reserved legal activity within the wider estate administration process. Several stakeholders have suggested that probate activities should be removed from the list of reserved legal activities. Analysis of available evidence and

³ Legal Services Board, Sections 24 and 26 investigations: will-writing, estate administration and probate activities Final reports, 13 February 2013, Page 33



consultation indicates that most consumers and stakeholders view preparing the papers on which to found or oppose a grant of probate as a step within the wider process of administering an estate. Many would therefore wish to use a single provider to deal with the whole process. Our investigation has found that the narrow scope of the existing probate reservation is resulting in fragmentation of service which in turn risks causing delays and increased cost. Consistency in reserved status between probate and estate administration may solve this problem. Within this analysis the investigation has found that the risks to consumers are greater in estate administration (where they have access to estate funds) than they are specifically within probate. However, we do not conclude that this of itself warrants the removal of reservation in the absence of robust evidence that the consequences would not have wider detrimental impacts.¹⁴

We assert that there is a need to gather the relevant evidence, given that the report conceded: ‘We do not have evidence of the likely impacts on consumers of removing of probate activities from the list of reserved legal activities’¹⁵ and ‘We have not attempted to analyse, nor sought views on, the marginal cost of regulation for probate activities.’¹⁶

With regard to regulatory independence, the interim report, at paragraph 1.39, refers to the anticipated government consultation on regulatory independence of regulators. Paragraph 1.39 goes on to state: ‘We consider that a key principle should be to ensure full independence of the regulator from the providers it regulates.’ We eagerly await the government consultation, and trust that the CMA will suspend its belief in ‘full independence’ until the findings of the consultation have been published. In the meantime, ACCA is keen to engage with the CMA to explain how ACCA (and some other representative bodies) would ensure rigorous regulation of its members, as this is central to ACCA’s reputation and its drive to provide public value.

OTHER MATTERS

Accompanying these comments on the CMA’s interim report is ACCA’s response to the recent consultation of the Ministry of Justice on proposed amendments to

⁴ Ibid, page 42

⁵ Ibid, page 40

⁶ Ibid, page 41



the Legal Services Act. In our response, we support many of the proposals. However, we believe that the time is right for a bolder transformation of the regulatory framework for legal services, including significant legislative reforms.

ACCA has a unique perspective on the subject of competition and legal services, as most ACCA practitioners operate through small practices, and offer a range of professional services to their clients. Therefore, ACCA is keen to engage further with the CMA in its market study. In particular, we would be happy to provide further information in respect of case studies concerning probate services – the role of an accountant in practice, typical client profiles, and how clients of accountants would benefit from using a ‘one stop shop’ where accountancy services and legal services merge.



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